MONTANA LEGISLATIVE HISTORY

Chapter 129 19 75

Bill H _____ S 283 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Mar 06	✓ C	Hearing Date(s) Feb 11	✓ C
_____	___ C	Feb 12	✓ C
_____	___ C	Feb 17	✓ C
_____	___ C	_____	___ C
Date Out Mar 06	✓ C	Feb 18	___ ✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

Senate BILL NO. 283

INTRODUCED BY Seibel Boylan Vardemen Manley Regan Rosell Conover Blaylock Jergeson McNeil Smith Nelson

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROVISIONS OF MONTANA'S SEXUAL CRIMES STATUTES PERTAINING TO SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTIONS 94-5-501 AND 94-5-503, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 94-5-501, R.C.M. 1947, is amended to read as follows:

"94-5-501. Definitions. (1) In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

(2) "Spouse" means one who is legally married to another and living with that person. Persons legally separated and living apart pursuant to a decree of legal separation are not married for purposes of this part."

Section 2. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"94-5-503. Sexual intercourse without consent. (1) A ~~male~~ person who knowingly has sexual intercourse without consent with a ~~female~~ person not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) The issue of consent may be proved by the testimony of the victim, without corroboration. It may also be proved by other evidence including actual words or conduct at the time of the act of sexual intercourse indicating freely given agreement to have sexual intercourse.

(a) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted under this part unless and only to the extent that the judge finds that the following proposed evidence is relevant to a fact at issue in the case and that its inflammatory or prejudicial nature does not

outweigh its probative value:

(i) evidence of the victim's past sexual conduct with the accused.

(ii) evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

(b) If the defendant proposes to offer evidence described in subsection (a) (i) or (ii), the defendant within ten (10) days after the arraignment shall file a written motion and offer of proof. The court may order a hearing to be held in chambers, to determine whether the proposed evidence is admissible under subsection (a). If new information is discovered during the course of the trial that may make the evidence described in subsection (a) (i) or (ii) admissible, the judge may order a hearing in chambers to determine whether the proposed evidence is admissible under subsection (a).

(7) Failure of the victim to make an immediate outcry shall not be a requirement of the offense set forth in this part; nor shall it be used to discredit the testimony of the victim in prosecutions under this part. "Immediate outcry" shall include but not be limited to outcry at the time of or immediately after the event, disclosure to law enforcement or other authorities, or to medical personnel.

-End-

JUDICIARY COMMITTEE

March 6, 1975

The forty sixth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Thursday, March 6, 1975 at 9:00 AM. Representativ Herb Huennekens, Chairman, presided. All members were present except Representatives Baeth and Vincent, absent, excused.

Bills scheduled for hearing this date were Senate Bills Nos. 283, 294 and 123 and they were heard in this order. Executive action was taken on Senate Bills Nos. 189, 294 and 283.

SENATE BILL NO. 283 Senator Ann Seibel, District #39, is chief sponsor of this act to revise the provisions of Montana's sexual crimes statutes pertaining to sexual intercourse without consent. She stated this attempt to revise the statute was long overdue. They attempted to maintain fairness and balance toward victims and rapists. She presented three Jane Doe letters from women who had experienced rape (see exhibits). Presently the burden of guilt is placed on the victim instead of the one who assaulted. The bill prohibits introduction of a person's past history. Feels this bill is a great step forward for Montana.

Carol Mitchell, representing the Women's Caucus of the law school, stated the midwinter conference of the American Bar Association adopted recommendations from the law student division It calls on the legislature to create law enforcement to revise the criminal law in relation to rape and revise the rules of evidence. The incidence of rape is skyrocketing. Only one in ten are even reported. Out of 3500 cases reported only eight were found guilty. She feels we must address ourselves to the fact that rape is a crime of violence, not a sexual crime. The victim need not resist. They feel that in achieving balance they do not want to intrude on defense every defender has. With this bill they are providing that if defendent proposes judge may order hearing without jury to determine if evidence is admissible. Presently the victim is often encouraged not to go into court. Feels this bill is a definite step forward.

The second portion of the bill should be amended to the effect that: 1) failure to make immediate outcry should not affect the case and 2) failure of victim should not create any presumption.

Proponent Tom Honzel, representing the County Attorneys' Association, was unable to be present but left letter supporting the bill. (see exhibit)

Proponent Margaret Davis, representing the League of Women Voters, stated they support this bill.

Representative Halvorson stated that many states are addressing this problem and questioned which ones were studies in drafting this bill and was told that section 5 comes fr Michigan and Washington laws with language modified to conform to Montana Codes.

Representative Meloy questioned why the exce tion to prior sexual conduct of victim in subsection (b) and was t that if a test of pregnancy or semen present, this is very strong evidence and can point to an offender. It narrows it to specifics Representative Moore questioned if subsections (a) and (b) are exc as to when types of evidence are deemed relevant and was told yes. He then suggested framing this in general language to the effect t if relevant the evidence should be admissible. Following brief ad ditional discussion the hearing was closed.

Chairman Huennekens had to leave and Repres Meloy took over as acting chairman.

SENATE BILL NO. 294 Senator Pat Regan, District #31, is chief s of this act redefining the offense of prost to include both the payer and the recipient of payment. She stat that previously with this one half of the criminal party was pena and the other half was not. In the interim study some laws were removed from the books, in this case they are asking legislature enact legislation which will bring Montana law into conformity.

No proponents. No opponents. No closing.

Representative Halvorson questioned how thi could be enforced. Senator Regan stated that if the party was a police woman you might get a conviction. Hearing was then closed

SENATE BILL NO. 123 Senator Joe Roberts, District #11, is chief sponsor of this act which provides definiti of sexual crimes by adding a definition of the term "without cons He stated this is one of a package of bills to amend the criminal It is the work of professors Crowley and Elison. Amendatory lang is found on pages 16 and 17 and it ties down the meaning of the t "without consent", ties definition to specific crimes. It tight up the definitions.

No proponents. No opponents. Representat Yardley questioned that the language was not changed to which Se Roberts replied no, it just ties to code sections.

There were no further questions and the he was closed.

EXECUTIVE SESSION

Representative Mike Meloy, acting chairman, presided.

SENATE BILL NO. 294 Representative Halvorson moved BE CONCURRED I on this bill heard earlier today. Representa Yardley stated this bill was studied by the interim committee on ER it caused much dissention on the committee and came out with a majo but was not unanimous. Representative Halvorson stated this came o with a majority because perhaps the majority were women. Feels leg lature should make an effort along this line.

Motion BE CONCURRED IN carried unanimously.

Representative James Moore, Vice-chairman, pr sided over the next portion of the meeting.

SENATE BILL NO. 283 Representative Anderson questioned if all rap cases were open to the public and was told th normally they are not but the judge can hear without a jury to dete whether to bring the evidence out. Representative Meloy stated the idea of making the case confidential would encourage the victim to report the rape. The reason for the language is if evidence ruled inadmissible then it won't be brought before a jury.

There was much discussion among committee mem regarding "timely complaint" and assault cases. Representative Mel stated he would like to include suggested language of one of the wi nesses to the effect that failure to make outcry shall not be used discredit the victim's testimony. Discussion followed. Representa Meloy then stated he doesn't like the last paragraph but is unable come up with better language so will not amend. Representative Hal vorson stated she would like to see the bill left as it is for now, it needs changing following trial, legislature can come back in two years and amend it.

Representative Scully moved BE CONCURRED IN. seconded by Representative Kimble and carried.

Representative Herb Huennekens, chairman, pre and presiding over committee meeting.

SENATE BILL NO. 189 Representative Lory moved BE CONCURRED IN. Motion was seconded by Representative Seifert Representative Moore made a substitute motion to amend on page 4, lines 24 and 25, also on page 5, line 4 by striking "respective dep Representative Meloy moved to amend by, as part of the amendment by Representative Moore, to strike "," and leave ".". Motion to amend carried unanimously.

STANDING COMMITTEE REPORT

March 6, 19 75

SPEAKER:

Your committee on JUDICIARY

having under consideration SENATE Bill No. 203

BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROVISIONS OF MONTANA'S SEXUAL CRIMES STATUTES PERTAINING TO SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING ~~SECTIONS~~ SECTION 94-5-501 AND 94-5-503, R.C.M. 1947."

respectfully report as follows: That SENATE Bill No. 203

CONCURRED IN

NAME Ann Liebel - Denton Bill No. 283

ADDRESS _____ Date _____

WHOM DO YOU REPRESENT? Sponsoring 283

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Margaret S. Davis Bill No SB 283

ADDRESS 917 Harrison Helena Date 6 Mar 75

WHOM DO YOU REPRESENT? Mt. League of Women Voters

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SB 283 revises the rape laws in a manner that protects the victim's privacy. It also removes sex discriminatory language.

NAME Jan Gerke Bill No. SB 253

ADDRESS 1011 Cherry Date 3/6/75

WHOM DO YOU REPRESENT? Women's Lobby, Inc

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Carol Mitchell Bill No. SB 283

ADDRESS Grant Creek Missoula Date 2/6/75

WHOM DO YOU REPRESENT? Women Lawyers, Law School

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Dear Senator:

Testimony such as this is not common. However, I feel the story I am about to convey may be helpful in considering Senate Bill 283.

Five years ago at the age of sixteen, I began living with a foster family. As the years went by I became very close to this family. In fact, I seemed to be the very pride and joy of my foster father. He praised me, advised me, and treated me with utmost respect. He even took me to dinner with his business associates to show me off and never failed to tell them what a good student I was and how I never missed a sunday a church. I felt as though their home was truly mine.

All this ended one cold night about a year ago when my father was away on business and my mother had taken the younger children to a lodge outside of town. I had had a date that night but had come home early because I felt fluish. It was so nice to go to my own warm room and crawl into a comfortable bed. At about 4 A.M. I was awakened by the sound of the front door opening. It was my father home early from his trip. I thought nothing of it and resumed sleeping. A few minites later my father came into my bedroom and asked me where every one was. Innocently I told him they were all at the lodge. He left and went to his bedroom across the hall. The light went off and I assumed he'd gone to bed. The next thing I knew he was standing by my bed in his underwear. "Can I sleep with you?" He said. I said no and scurried to the other side of the bed trying to make my way to the door. I was thrown back on the bed and my night clothes riped off. This rest of this gruesome detail can go without saying. I have never experienced anything so physically or psychologically horrifying. I screamed, begged, and pleaded with him. I was literally pinned I could not move.. At last he changed his position for a moment and I was able to run down the hall and into the living room. I opened the door and began out when I felt his steel arms around my waist. I grabbed the outside door pane screaming and kicking. As he took one arm from my waist to cover my mouth, one fortunate kick became my liberation as I ran into the street never to return to my secure abode again. As it were, I ran naked to a friends house nine blocks away and was taken in.

I have tried not to be over dramatic, but I really couldn't be. This incident deeply affected me at the time and has since. I had no where to go and could not possibly tell my foster mother what had happened. I rented a room near my school. I trusted know one and did not sleep at night for over two months. Instead I dropped most of my credits and slept during the day. This was all very taxing, but the most tormenting thing was the realization that this man whom I had loved and respected as a father would actually assault me in such a selfish way. At times I still wake up out of a night mare screaming. I think it will be a long time before I am able to live with this memory.

Sincerely,

10 February 1975

Senator Thomas Towe, Chairman
Senate Judiciary Committee
Capitol
Helena, Montana 59601

Dear Chairman and Committee Members:

As a former rape victim, I would like to urge you to consider passage of Bill S-283 which would prohibit the mention of the victim's past sex life during a rape trial unless it is deemed relevant by the judge. Although I was not forced to testify since the actor in the crime pled guilty at the last minute, I found that the threat of having to be cross-examined by the defense attorney was as traumatic as the rape incident itself. I am sure that this defense tactic discourages many rape victims from pressing charges at all. They not only fear the publicity involved, but also realize that the attacker has a better chance of being acquitted when the defense can somehow appear to shift the blame to the victim. As I became aware during my experience, the rape victim is often made to look and feel like the guilty party, a situation unique to rape among crimes of violence. Thus I urge you to consider favorably Bill S-283.

Yours sincerely,

Jane Doe

Jane Doe

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
FEBRUARY 11, 1975

ting was called to order by Senator Towe, Chairman, at 9:45 a.m.
442 of the Capitol Building.

lowing bills were heard: SB 283
SB 356.

Senator Seibel, District 39 and sponsor of the bill, stated the purpose of the bill is to revise the rape laws and to prevent the needless delving into victim's backgrounds when testifying. She presented letters to the Committee members from three victims. She stated that of all the rape cases reported in Montana in the last two years only 2% of the offenders were sentenced to Deer Lodge.

Carol Mitchell, representing the Women"s Caucus of the Student Bar Association, University of Montana Law School, stated she had worked with Senator Seibel on the bill and presented proposed amendments to the Committee for consideration (attached).

Joan Uda, University of Montana Law School and representing the National Organization of Women in Montana, presented her testimony in support of the bill (attached).

Tom Olson, Gallatin County Attorney, urged adoption of the bill with the proposed amendments. He stated he felt the background of a woman has no bearing on the rape situation. He cited examples of cases he had handled and expressed hope that this bill would be a step toward enlightened and compassionate treatment of rape victims.

Tom Honzel, representing the Montana County Attorneys Association, stated that organization supports the bill with the proposed amendments. He suggested a change in wording "in camera" to "hearing in chambers".

Dr. John Schneider, Montana State University, stated his support of the bill. He is engaged in counselling rape victims and advocates any bill which eliminates further trauma during the trial period. Reactions of shame, guilt, mistrust, fear, and anxiety are all reestablished and reenforced in excess during a trial. He stated he could not advise a victim to prosecute under current law.

Jennifer Thompson, representing Women's Place, Missoula, presented testimony in support of the bill (attached).

of the Meeting

Deirdre Caughlin, representing the Women's Resource Center, University of Montana, presented testimony in support of the bill (attached).

A letter of support from Missoula County Attorney Robert Deschamps III was presented to the Committee (attached).

Senator Greely, District 20 and sponsor of the bill, stated the bill is designed to be an alternative method of Justice of the Peace Court at the local level.

Paul Keller, Past Chairman of the Montana Bar Association, spoke in support of the bill and presented a written synopsis of the bill (attached).

OPPONENT

Bruce Lanthorn, Justice of the Peace, Helena, and a member of the Montana Commission on Lower Courts stated Justices of the Peace are now seeking mandatory yearly training and much improvement has been made recently. He stated HB 228 and 229 are in support of Justices of the Peace and upgrading the Justice of the Peace system. He urged keeping the Justice of the Peace system as it is now but stated he did feel legal training is necessary.

ıblic hearing was closed and the Committee met in Executive on.

or Towe assigned the privacy bills, SB 389 and 400, to a sub-ttee composed of Senator Cetrone, Chairman, Senator Brown and or Drake.

or Towe assigned the committment bill, SB 377 and SB 388 to a ommittee composed of Senator Greely, Senator Turnage, and Senator n.

being no further business, the meeting adjourned to reconvene sday, February 12, at 9:30 a.m.

Thomas E Towe

CHAIRMAN

ROLL CALL

Judiciary COMMITTEE

~~SECOND HALF~~ 44th ~~43rd~~ LEGISLATIVE SESSION 1975 Date 2,

	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown			X
Glen L. Drake			X
Jean A. Turnage	X		
Michael Greely	X		

VISITOR'S REGISTER

NAME	REPRESENTING	Oppose / Support
[illegible]	[illegible]	
[illegible]	[illegible]	
John Schmidt	Counseling Psychologist - Missoula	
Leisha Caughlan SB 283	Women's Resource Center Missoula	
Jennifer Thompson	Women's Place, Missoula	X
[illegible]	[illegible]	
Tom Hansel	Mont County Attorneys	SB283
TOM OLSON	GALLATIN COUNTY ATTY	283
Margaret S. Davis	League of Women Voters	283
Bruce Kantz		
Stacy Cole	Dorothy Bradley	
Susan Roy	Self	
Paul Keller	Self Brown, Mont Bar Assn	396
Bruce Sanderson	Justice of Peace, Helena	

E: Trevor Mitchell DATE:

RESS: Grant Creek Missoula

NE: 549-4855

RESENTING WHOM? Montana Farmers Union Montana Dry Land Sorghum Council

EARING ON WHICH PROPOSAL: SB 283

YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

MENTS:

ASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WOMEN'S CAUCUS

ESTIMONY OF CAROL MITCHELL
REPRESENTING THE S.B.A. WOMEN'S CAUCUS

O: SENATE JUDICIARY COMMITTEE

E: S.B. 283

EBRUARY 11, 1975

he Women's Caucus of the Montana Student Bar Association supports he purpose of S.B. 283, and proposes the following amendments:

1. We recommend that the title be amended by deleting the following: "...SECTIONS-94-5-501-AND...".

2. We recommend that Section 1 be entirely deleted.

3. We recommend that Section 2 be amended by deleting the following: "Section-2."

4. We recommend that subsection (5) on pages 2 and 3 be entirely deleted, and that the following be substituted:

"(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) Evidence of the victim's past sexual conduct with the offender;

(b) Evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which are at issue in the prosecution under this section.

If the offender proposes to offer evidence described in (a) or (b), the trial judge shall order an in camera hearing to determine whether the proposed evidence is admissible under this subsection."

E: Joan Uda DATE: 2/11/13

DRESS: 420 Waltman, Pleasanton

ONE: 925-398-4191

PRESENTING WHOM? National Organization for Women, Montana

PEARING ON WHICH PROPOSAL: SB 283

YOU: SUPPORT? L AMEND? L OPPOSE? _____

MENTS: The amendments NOW proposed are primarily to enhance the clarity and workability of the bill where footprints are already proposed

: TOM OLSON DATE: 2-11-75

RESS: 221 W. GRANT, BOZEMAN MT

NE: 587-3161

RESENTING WHOM? GALLATIN COUNTY ATTORNEY

EARING ON WHICH PROPOSAL: SB 283

YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

MENTS:

LEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dr. John Schneider DATE: 2/2/93

ADDRESS: 347 Reid Hall, Montana State University

PHONE: 994-4311

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL: Sen 383

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: The need for a more psychologically because I have concerns the use of acupuncture for personal and professional concerns that are

AME: Jennifer Thompson DATE: 2-11-75

DDRESS: 224 Crosby, Missoula

HONE: 7285853

EPRESENTING WHOM? Women's Place, Missoula

PPEARING ON WHICH PROPOSAL: SB 283

O YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

OMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Women's Place, located in Missoula Montana, is a health education and counseling service for women. The service opened in January, 1974 and began advertising the availability of rape relief and rape education programs in May, 1974. To date we have dealt with 25 rape victims and have presented over 35 rape education programs. The victims we have seen range in age from 14 years to middle thirties. Some live in Missoula, some live in the surrounding area and some contacted us from as far away as northern Idaho. Some were raped by members of their family, some were raped by strangers. All reported that they were terrified, that they felt violated and degraded; none enjoyed it. In some instances we have accompanied rape victims through the hospital and criminal justice system procedures; in other cases, when women have not wanted to report the rape, we have talked with them about their experience, trying to help them deal with the trauma surrounding a rape victim. Of the 25 rape victims we have counseled, only 4 reported the attack to the police or the sheriff. Of that 4, only 1 case went to trial and that case resulted in an acquital.

At Women's Place we explain the procedures necessary for prosecution to all rape victims. We encourage women to consider reporting the rape to the police and carrying through with prosecution because there is evidence to show that many rapists are repeaters. In fact, according to Dr. Geraldine Boozer, Director of the Sex Offender Rehabilitation program, S. Florida State Hospital, many of the rapists she works with have established patterns before they are apprehended of raping women several times a month. However, many women we have worked with have not been willing to report rape because of the stigma traditionally associated with being a rape victim and because they are aware of the inhumane treatment rape victims often receive from the criminal justice system.

The rape victims we see, particularly those from rural, small town Montana, are not willing to face the hostile public opinion that surrounds being a rape victim. Rape is the only crime where the victim is often considered more guilty than the perpetrator of the crime. Women who are identified as rape victims often are forced to change jobs or move to a new location in order to escape notoriety. In several cases, women we have seen have refused to even tell their parents or relatives, much less report the crime to the police. In other cases family members have brought pressure on the victim to drop charges because the family's status and reputation in the community would be damaged.

jobs or move to a new location in order to escape notoriety. In several cases, women we have seen have refused to even tell their parents or relatives, much less report the crime to the police. In other cases family members have brought pressure on the victim to drop charges because the family's status and reputation in the community would be damaged.

Another major area of concern for many women we have seen, is the fact that their prior sexual experience will be discussed in the courtroom. Several victims have specifically noted their reluctance to have their life history revealed when no past history of the accused could be introduced. The majority of the women we have counseled were aware that the burden of proof was on them to prove that they didn't consent to intercourse rather than on the accused to prove that they did consent. In other crimes, such as burglary or assault, the victim does not have to prove that they did not consent to share their money with the burglar or did nto agree to be struck by the assailant. The younger women often dismissed any chance of prosecution because of their life styles and general prejudice against sexually active wo

urther problem we have encountered is the attitude of the judiciary ard the crime of rape. Within the last year, at least 2 Missoula ges have handed down suspended sentences of less than a year for e convictions. Victims, seeing that convicted rapists receive such nt sentences from judges, are convinced that prosecution is not th the personal agony and exposure they would endure.

Women's Place we have concluded that one of the major reasons t victims are unwilling to report or prosecute the crime of rape due to inequities in the written law and in the interpretations of law.

le we feel that the roots of the rape problem lie within basic ietal attitudes toward women and towards sexuality, and will require e complex solutions than legislative reform, we support the passage Senate Bill 283 because it removes prejudice against rape victims t has been institutionalized within the law and therefore will ieve increased reporting of rape.

n women realize that their prior sexual history will not be used evidence against them in the trial, they will be more willing to ure the procedures necessary for reporting and prosecuting. Women now feel that due to their life style they would be unable to ain a conviction, regardless of the facts surrounding the case, l be encouraged to use the criminal justice system. When the inal justice system responds appropriately to the crime of rape treats the victims with the consern and reppect they deserve , n victims will be willing to co-operate in the criminal justice tem's efforts to decrease the incidence of rape.

MYTHS ABOUT RAPE

a) A rapist is a sexually unfulfilled man carried away by a sudden, uncontrollable surge of desire.

facts: 90% of group rapes are planned; 58% of rapes by a single man are planned. 60% of the rapists studied were married and led normal sexual lives at home. (Patterns of Forcible Rape, Amir, 1971) Dr. William Pendergast of New Jersey State Prison has stated that all of the rapists he has studied had available sexual relationships.

b) Rapists are psychologically sick and perverted men.

facts: Men convicted of rape are found to have normal sexual personalities, differing from the norm only in a greater tendency to express anger and violence.(Amir) Alan Taylor, parole officer at San Luis Obispo, California, said of rapists:"those men are the most normal here." Rape is the logical consequence of the way men and women are taught to treat each other. Boys learn at an early age that aggression and violence prove virility and masculinity, while girls learn to play hard-to-get.

c) Rapes occur in places where women shouldn't be anyway.

facts: Over 1/3 of reported rapes are committed in the victim's home; over 50% occur in a residence.

d) Victims provoke attack by their behavior.

facts: The Federal Commission on Crimes of Violence reports that only 4% of reported rapes involved precipitative behavior on the part of the woman. A Washington, D.C. study shows that 82% of the women involved in rape cases have "good" reputations.

e) Rape is impossible without consent; a normal woman can't be raped.

facts: Women often submit because they fear for their lives if they struggle. Most men are physically stronger than most women and the [illegible] the advantage of surprise. Women are conditioned to [illegible] never developed their natural body

facts: The Federal [illegible]
of reported rapes involved precipitat[illegible]
woman. A Washington, D.C. study shows that 82% of the [illegible]
volved in rape cases have "good" reputations.

e) Rape is impossible without consent; a normal woman can't be raped.

facts: Women often submit because they fear for their lives if they struggle. Most men are physically stronger than most women and the attacker has the advantage of surprise. Women are conditioned to believe they are weak; most have never developed their natural body strength.

f) There is nothing women can do to protect themselves from rape.

facts: Attacks have been sucessfully repelled by loud yells and physical resistance. It is important to evaluate the situation carefully before deciding what tactics to use, but knowing before hand what to do in a given situation is a way of breaking out of the victim role. Women can learn self-defense including basic measures such as biting, pulling hair, blows to the face and kicks to the knee. Acting defensively can help eliminate the need for force. This means looking alert and confident when walking alone, having keys ready before arriving home, using sturdy locks on doors and only last names on mailboxes or in the phonebook, checking the backseat of your car before you get in and being aware that some types of women's clothes limit mobility (heels, clogs, large purses). Weapons such as plastic lemons, aerosol cans, lighted cigarettes, red pepper, etc. may be useful but can be used by the attacker. When weapons fail, reasoning with the attacker, relating a sob story or claiming to have a contagious disease have sometimes proved effective.

NAME: Deirdre Coughlan DATE: 2/11

ADDRESS: Women's Resource Center, UM Missoula

PHONE: 243-4153

REPRESENTING WHOM? Women's Resource Center

APPEARING ON WHICH PROPOSAL: SB 283

DO YOU: SUPPORT? ✓ AMEND? — OPPOSE? _____

COMMENTS: Prepared statement submitted

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Rape is the fastest growing violent crime in the United States. The FBI estimates that a forcible rape occurs somewhere in the U.S. every ten minutes. While murder and non-negligent homicide have increased 116% in the last thirteen years, rape has risen 119% in that same time period. The conviction rate for rape is also lower for rape than for other violent crimes. Forty six percent of all rape cases ended in acquittal while the acquittal rate for other crimes was twenty-nine percent.

The Chicago Crime Commission estimated that in 1972 there were 35,620 rapes committed in Chicago. Of these:

3,562 rapes were reported
833 arrests were made
204 indictements were issued
23 pled guilty
8 were found guilty and sentenced

Missoula statistics follow approximately the same pattern as the Chicago figures. Police and Sheriff's departments estimate that there were 21 reports on rape in a six month period. From this we can assume that they will receive 40-50 rape reports in a year. The 1972 Missoula county attorney figures show that of five rape cases prosecuted ; 1 was dismissed; 2 were lowered to assault, and two were convicted.

If w e assume that one rape was reported for every ten that were committed, and that from one to ten percent of those accused are found guilty, then we must question why both the reporting and the convictions are so low .

Women w ho have been raped fear the publicity, rapists threats [illegible] police and the courts. Unless it is speci-

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If w e assume that one rape was reported for every ten that were committed, and that from one to ten percent of those accused are found guilty, then we must question why both the reporting and the convictions are so low .

Women w ho have been raped fear the publicity, rapists threats of further harm, the police and the courts. Unless it is specifically for bidden by law, the defense attorney is likely to ask the victim detailed questions about her previous sexual history.

"The cross-examination can be gruelling. The accused rapist's attorney often initiates his case by inquiring as to the number of men with whom the victim has had intercourse." (American Criminal Law Review, Vol. II, Number 2; Winter 1973, p. 351) Although the accuses rapist is often a repeater, it is not allowed to bring this out in court.

Thus, when the victim is forced to defend her past, which is irrelevant to the case, in one sense she becomes the accused. Common attitudes and many state laws assume many out dated codes of moral behavior on the part of women. By forcing a woman to reveal her past in a rape trial the law is implying that chastity is a prerequsite for being raped. The burden of proof lies with the victim to show that she could be raped at all.

Judging rape on the basis of either the accused or the victim's past sex life confuses the issue with normal sexuality. Many view rape as an act of overwhelming sexual passion. It has been shown that this is not the case at all. Studies done with convicted rapists show that they were motivated by aggression and hostility, not overwhelming passion.

Societal attitudes towards male aggression and female passivity often reinforce that way rape is viewed and women react to a rape situation. Males from a very early age are often taught that women are weak inferior beings that can be dominated. This is complimented by the practice of socializing girls to be passive and not to fight back. These attitudes were reflected by some young boys that raped and murdered two young girls. "They were

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children. Many rape victims report that they were paralyzed by fear and were unable to react.

Hopefully changing the laws and the attitudes toward rape will change these disturbing trends. The passage of SB 283 should encourage women to report and prosecute rape in the state of Montana. It is hoped that with careful consideration and the changing of the rape laws that the victims will report and prosecute this violent attack on their bodies.

NAME: MARGARET S. DAVIS DATE: 2/11/75

ADDRESS: 917 HARRISON, HELENA, MONTANA

PHONE: 443-3487

REPRESENTING WHOM? MONTANA LEAGUE OF WOMEN VOTERS

APPEARING ON WHICH PROPOSAL: SB 283

DO YOU: SUPPORT? X AMEND? X OPPOSE? _____

COMMENTS: SEXUAL INTERCOURSE WITHOUT CONSENT SHOULD NOT BE DEFINED IN MALE/FEMALE TERMS. THIS BILL WOULD COVER HOMOSEXUAL RAPES AS WELL AS HETEROSEXUAL ONES. THE LEAGUE SUPPORTS SB283 WITH AMENDMENTS.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MISSOULA COUNTY

OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59801
TELEPHONE: (406) 543-3111

ROBERT L. DESCHAMPS III

HAROLD V. DYE
CRIMINAL DIVISION
RUSSELL R. ANDREWS, CHIEF
ED McLEAN, DEPUTY
DENNIS E. LIND, DEPUTY
CHARLES W. SCHUYLER, ASSISTANT SUPERVISOR
FAMILY LAW DIVISION
LONNIE J. DALE, CHIEF
BONNIE KINYON, CLERK
INVESTIGATION
KEITH A. PHELPS
OFFICE MANAGER
HARRIETT RILEY

January 7, 1975

House Judiciary Committee
State Capitol
Helena, Montana 59601

Re: Changes in Evidence in Rape Cases

Gentlemen:

I am writing regarding support in changes in evidence received by courts in rape cases.

The changes I support would be the following:

1) Eliminating the requirement for immediate outcry by the victim, and

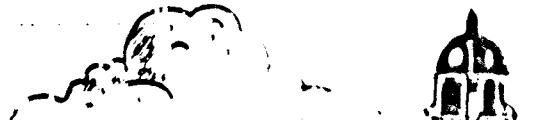
2) Excluding evidence of prior sexual behavior of the victim, except when directly relevant to the case.

Sincerely,

Robert L. Deschamps

Robert L. Deschamps III
Missoula County Attorney

RLD/bk



10 February 1975

Senator Thomas Towe, Chairman
Senate Judiciary Committee
Capitol
Helena, Montana 59601

Dear Chairman and Committee Members:

As a former rape victim, I would like to urge you to consider passage of Bill S-283 which would prohibit the mention of the victim's past sex life during a rape trial unless it is deemed relevant by the judge. Although I was not forced to testify since the actor in the crime pled guilty at the last minute, I found that the threat of having to be cross-examined by the defense attorney was as traumatic as the rape incident itself. I am sure that this defense tactic discourages many rape victims from pressing charges at all. They not only fear the publicity involved, but also realize that the attacker has a better chance of being acquitted when the defense can somehow appear to shift the blame to the victim. As I became aware during my experience, the rape victim is often made to look and feel like the guilty party, a situation unique to rape among crimes of violence. Thus I urge you to consider favorably Bill S8283.

Yours sincerely,

Jane Doe

Jane Doe

Feb 12

SENATOR DRAKE MOVED TO AMEND THE BILL IN THE TITLE, LINE FOLLOWING "STATE" BY INSERTING "OR ITS POLITICAL SUBDIVIS AND TO FURTHER AMEND THE BODY OF THE BILL IN SECTION 1, 12 AND 13 FOLLOWING "MONTANA" BY INSERTING "OR ITS POLIT SUBDIVISIONS". THE MOTION CARRIED WITH SENATORS WARDEN GREELY VOTING NO ON A ROLL CALL VOTE.

SENATOR GREELY MOVED TO AMEND THE TITLE AND THE BODY OF BILL TO PROVIDE AN EFFECTIVE DATE OF JULY 1, 1976. THE MOTION PASSED UNANIMOUSLY ON A ROLL CALL VOTE.

SENATOR DRAKE MOVED SB 348 DO PASS AS AMENDED. THE MOTI CARRIED WITH SENATORS GREELY AND WARDEN VOTING NO ON A R CALL VOTE.

The Committee will hold the bill until Pat Driscoll can do some checking with various County Treasurers.

SB 148 SENATOR ROBERTS MOVED TO PLACE THE AMENDED AND REPEALING SECTIONS IN THE TITLE. THE MOTION CARRIED UNANIMOUSLY O A ROLL CALL VOTE. Pat Driscoll, Committee Researcher, w asked to consult with Jim Zion on Sections 1-5.

SB 283 The Committee discussed various amendments to the bill b had to adjourn before taking any official action.

There being no further action, the meeting adjourned to reconvene Thursday, February 13, at 9:30 a.m.

Thos E. Ed.

CHAIRMAN

Feb 17

Captain Duane Tooley, Chief Examiner of the Montana Highway Patrol, stated he was not opposed to the bill but did have some reservations about several provisions: transfer of traffic violations, universal identifiers, and blood and alcohol tests.

Howard Vralsted, Montana Income Tax Division of the Department of Revenue stated he was not opposed to the bill but felt the division might be precluded from furnishing information to the internal revenue section.

John Cadby, Manager of the Montana Banker's Association, stated he agreed philosophically with the bill but felt certain provisions might cause difficulties in banking transactions. He especially was concerned with the social security number provision and recording of information into a data system.

ıe public hearing was closed and the Committee met in Executive Session .th Vice Chairman Joe Roberts presiding in the temporary absence of ıe Chairman.

3 283 -- SENATOR GREELY MOVED THE ADOPTION OF THE FOLLOWING AMENDMENTS: AMEND TITLE BY STRIKING "94-5-501" IN LINE 7; STRIKE SECTION 1 IN ITS ENTIRETY; STRIKE SECTION 2, SUBSECTION 5 IN ITS ENTIRETY AND INSERT NEW SECTION 5 (ATTACHED).

THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SENATOR GREELY MOVED TO STRIKE ON PAGE 3, SUBSECTION 7, IN ITS ENTIRETY AND THAT SB 283 DO PASS AS AMENDED. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR WARDEN NOT VOTING.

Senator Drake and Senator Roberts asked the Secretary to see if a new bill could be written.

There being no further business the meeting adjourned to reconvene Tuesday, February 18, at 9:30 a.m.

Thomas E. Drake

Chairman

ROLL CALL

Judiciary COMMITTEE

44th
~~SECOND HALF~~ - ~~43rd~~ LEGISLATIVE SESSION 1976 Dat

NAME	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown	X		
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Greely	X		

SENATE COMMITTEE JUDICIARY

Date FEB 17, 1975 SENATE Bill No. 293 Time

NAME	YES	NO
THOMAS E. TOWE		
JOE R. ROBERTS	X	
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill D. Kilgore
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Greely to amend victim 1, Section 3, subsection 1-c.

(include enough information on motion--put with yellow copy of

SENATE COMMITTEE JUDICIARY

Date FEB. 17, 1975 SENATE Bill No. 283 Time

NAME	YES	NO
THOMAS E. TOWE		
JOE R. ROBERTS	X	
V.E. CETRONE	X	
MARGARET S. WARDEN		
ROBERT J. BROWN	X	
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill Rabyans
Secretary

Thomas E. Towe
Chairman

Motion: By Senator Greely to strike Section 2; subsection 1 and that SB 283 DO PASS AS AMENDED.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 18, 1975

PRESIDENT

your committee on JUDICIARY

ad under consideration SENATE Bill No. 283

ully report as follows: That SENATE Bill No. 283

introduced bill, be amended as follows:

1. Amend title, line 6.
   Following: "AMENDING"
   Strike: "SECTIONS"
   Insert: "section"

2. Amend title, line 7.
   Strike: "94-5-501"

3. Amend the bill, pages 1 through 3.

Strike: All of the bill following the enacting clause.

Insert:

"Section 1. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

94-5-503. Sexual intercourse without consent. (1) A male person who knowingly has sexual intercourse without consent with a female person not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

~~(5) No evidence concerning the sexual conduct of the victim is admissable in prosecutions under this section, except:~~

~~(a) Evidence of the victim's past sexual conduct with the offender;~~

~~(b) Evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.~~

~~If the defendant proposes, for any purpose, to offer evidence described in (a) or (b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evide is admissable under this subsection.~~"

AND AS SO AMENDED, DO PASS

CHAIRMAN

5. We recommend that subsection (7) on page 3 be entirely deleted, and the following substituted:

"(6) Failure of the victim to make immediate outcry or disclosure shall not discredit the testimony of any victim in prosecutions under this section."

SENATE BILL NO. 283

INTRODUCED BY SEIBEL, BOYLAN, WARDEN, MANLEY, REGAN, ROSELL, CONOVER, BLAYLOCK, JERGESON, MEHRENS, R. SMITH, NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROVISIONS OF MONTANA'S SEXUAL CRIMES STATUTES PERTAINING TO SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING ~~SECTIONS~~ SECTION 94-5-~~501 AND~~ 94-5-503, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
(Strike everything after the enacting clause and insert:)

Section 1. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"94-5-503. Sexual intercourse without consent. (1) A ~~male~~ person who knowingly has sexual intercourse without consent with a ~~female~~ person not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

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(a) Evidence of the victim's past sexual conduct with the offender;

(b) Evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

If the defendant proposes, for any purpose, to offer evidence described in (a) or (b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissable under this subsection.

(6) IF THE ISSUE OF FAILURE TO MAKE A TIMELY COMPLAINT OR IMMEDIATE OUTCRY IS RAISED, THE JURY SHALL BE INFORMED THAT SUCH FACT, STANDING ALONE, MAY NOT BAR CONVICTION."

-End-

REFERENCE BILL